

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

EDGAR PERRY,

No. C 13-02369 LB

Plaintiff,

v.

CASHCALL, INC.; UNITED STATES  
CONSUMER FINANCIAL PROTECTION  
AGENCY,

Defendants.

**ORDER (1) DENYING PLAINTIFF'S  
"MOTION TO ADVISE THE STATE OF  
CALIFORNIA TO ACCEPT/DECLINE A  
MAGISTRATE JUDGE IN THIS CASE  
WITHIN 2 WEEKS," (2) DIRECTING  
THE UNITED STATES MARSHAL TO  
INFORM THE COURT REGARDING  
SERVICE, AND (3) CONTINUING THE  
HEARING ON DEFENDANTS'  
MOTIONS TO DISMISS**

[Re: ECF No. 59]

On October 1, 2013, *pro se* plaintiff Edgar Perry filed a document titled, "Motion to Advise the State of California to Accept/Decline a Magistrate Judge in this Case within 2 Weeks." Motion, ECF No. 59.<sup>1</sup> Mr. Perry named the State of California as a defendant to this action in First Amended Complaint, and on August 21, 2013 the court ordered the United States Marshal to serve, without prepayment of fees, a copy of the First Amended Complaint, any amendments or attachments, Mr. Perry's IFP affidavit, and the court's order directing service, on the State of California. FAC, ECF No. 18; 8/21/2013 Order, ECF No. 30. On August 22, 2013, the Clerk of the Court issued the

<sup>1</sup> Citations are the Electronic Case File ("ECF") with pin cites to the electronically-generated page numbers at the top of the document.

1 summons, Summons, ECF No. 31, and on August 26, 2013, the United States Marshal  
2 acknowledged receipt of the summons, Acknowledgment, ECF No. 36, but so far no executed  
3 summons demonstrating service on the State of California has been filed, and the State of California  
4 has not yet appeared in this action, *see* Docket. In light of the State of California's non-appearance  
5 in this action, it is not appropriate for the court to order it to consent or decline magistrate  
6 jurisdiction. Mr. Perry's motion therefore is **DENIED**.

7 Still, to clear up the record, and to ensure that all defendants have been served, the court  
8 **ORDERS** the United States Marshal to do one of two things by **December 13, 2013**: (1) If the  
9 United States Marshal has served the State of California, the United States Marshal shall file an  
10 executed summons; (2) If the United States Marshal has not served the State of California, the  
11 United States Marshal shall explain why it has not, or cannot, do so.

12 Finally, in light of the questions about whether the State of California has been served (and the  
13 related issue regarding whether it needs to consent to or decline the undersigned's jurisdiction<sup>2</sup>), the  
14 court once again must continue the hearing on Defendants' motions to dismiss. Accordingly, the  
15 court **CONTINUES** the hearing on Cashcall's, the Portuguese Fraternal Society of America's, and  
16 the First Bank of California's motions to dismiss to from December 19, 2013 to **February 6, 2014 at**  
17 **11:00 a.m.**

18 **IT IS SO ORDERED.**

19 Dated: December 9, 2013

  
\_\_\_\_\_  
LAUREL BEELER  
United States Magistrate Judge

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27 <sup>2</sup> Unserved defendants are not "parties" for consent purposes. *See Ornelas v. De Frantz*, C  
28 00-1067 JCS, 2000 WL 973684, at \*2 n.2 (N.D. Cal. June 29, 2000) (citing *Neals v. Norwood*, 59  
F.3d 530, 532 (5th Cir. 1995)).